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September 13, 2006

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1262; Reserve Requirements of Depository Institutions; Notice
of Proposed Rulemaking

Dear Ms. Johnson:

The American Bankers Association (“ABA”) appreciates this opportunity to comment on the proposed change to an interpretation by the Federal Reserve Board (“Board”) concerning the circumstances under which a bankers’ bank will be exempt from reserve requirements. The ABA brings together all categories of financial institutions to best represent the interests of this rapidly changing industry. Its membership—which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, savings banks, and bankers banks—makes ABA the largest banking trade association in the country.

Summary of comment

- The ABA supports as a general proposition any effort to ensure that an agency’s regulations are sufficiently flexible to respond to industry developments.
- The current proposal, by removing an impediment to expanding the types of customers a bankers’ bank may serve, raises issues for many bankers’ banks about the extent to which the proposal could contribute to an erosion of the unique characteristics of the bankers’ bank charter.
- If the Board adopts the proposal, it should use a notice-and-comment process to evaluate requests to expand the types of customers a bankers’ bank may serve while remaining exempt from reserve requirements.

Discussion

Section 19(b) of the Federal Reserve Act imposes reserve requirements on depository institutions that maintain certain accounts. However, section 19(b)(9) – the “bankers’ bank exemption” – exempts an institution from the reserve requirements if the institution –

- Is organized solely to do business with other financial institutions;
- Is owned primarily by the financial institutions with which it does business;
- and

- Does not do business with the general public.

In 1980, the Board issued an interpretation that clarified the criteria of the bankers' bank exception. That interpretation, codified at 12 C.F.R. § 204.121, lists specific types of customers with which a bankers' bank may do business and be regarded as "not do[ing] business with the general public." The proposal would authorize the Board to permit a bankers' bank, on a case-by-case basis, to do business with other types of customers and still qualify for the exception. However, the proposal does not address the criteria the Board would apply when reviewing requests or the process by which such determinations would be made.

As a general proposition, the ABA supports the Board in its efforts to ensure that Board regulations do not impede the exercise of powers granted by a financial institution's primary regulator. Thus, we commend the Board for reviewing its interpretation of Reg. D to see whether the interpretation should be changed to accommodate developments in the bankers' bank industry.

Many bankers' banks are concerned, however, about the extent to which the Board's proposal would facilitate competition between bankers' banks and their shareholders and, as a result, jeopardize the unique nature of the bankers' bank charter. While the Board's interpretation addresses only the question of when a bankers' bank may remain exempt from reserve requirements, it nevertheless could remove an impediment to the full exercise by a bankers' bank of authority granted by its primary regulator. Accordingly, many bankers' banks view the Board's proposal as inexorably linked to the question of the banks' authority.

If the Board decides to adopt the proposal, we urge the Board to exercise its authority to expand the list of eligible bankers' bank customers only after a notice-and-comment process. In this way, interested parties would have an opportunity to monitor and comment on proposed developments that could fundamentally alter their business. We recognize that whether, and to what extent, any institution must comply with reserve requirements is confidential information. Nevertheless, the Board could publish the type of new customer that is the subject of the request without disclosing the identity of the requesting party or any specific customer of a bankers' bank.

We appreciate your consideration of our views.

Sincerely,

/s/

Mark J. Tenhundfeld
Director, Office of Regulatory Policy